

I-2
99-0-1958

**AN ORDINANCE
BY THE COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE
OF THE CITY OF ATLANTA**

AN ORDINANCE AMENDING THE 2000 COMPREHENSIVE DEVELOPMENT PLAN (CDP) TO INCORPORATE POLICIES TO PROTECT THE CITY'S WETLANDS AND WATER SUPPLY WATERSHEDS; AND FOR OTHER PURPOSES

WHEREAS the City of Atlanta recognizes the critical roles of wetlands and water supply watersheds in providing for the health, safety, and welfare of the people of the City of Atlanta and surrounding communities; and

WHEREAS the viability of wetlands and water supply watersheds could be threatened in some instances by the presence of certain types and magnitudes of land development activity and their associated operations in environmentally-sensitive locations; and

WHEREAS the adverse environmental impacts which may be produced by unregulated land development activity and associated operations in wetlands and water supply watersheds could include water pollution, the loss of available water supply, soil erosion, flooding, destruction of natural plant and wildlife habitats, the loss of lands for recreational and open space purposes, and other impacts; and

WHEREAS the ability of natural ecosystems to mitigate and compensate for adverse effects emanating from the undesirable impacts of certain types and magnitudes of land development activity and their associated operations in environmentally-sensitive locations is limited and may require many years to occur; and

WHEREAS undesirable tangible and intangible results could be experienced by the citizens of Atlanta, as well as the necessity for the City of Atlanta to incur exorbitant expenses to take various actions to overcome such adverse environmental impacts; and

WHEREAS in order for the City of Atlanta to maintain its legal certification by the Georgia Department of Community Affairs, an acceptable Environmental Element must be included in each annual edition of the City's Comprehensive Development Plan; and

WHEREAS Georgia Department of Community Affairs officials have identified an absence of effective environmental regulations in the Environmental Element of the Comprehensive Development Plan for addressing possible threats to the City's wetlands and water supply watersheds; and

WHEREAS the City of Atlanta has prepared a 'City of Atlanta Wetland Protection Ordinance' and a 'City of Atlanta Water Supply Watershed Protection Ordinance', which represent Exhibits 'A' and 'B', as are attached and incorporated herein by reference, to establish regulations for protecting the City's wetlands and water supply watersheds,

which are to be enforced and modified, as may be required, by the Department of Planning, Development, and Neighborhood Conservation;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS, AS FOLLOWS:

Section 1: That the City Council concurs that the wetlands and water supply watersheds that are located within the corporate boundaries of the City of Atlanta must be protected from adverse and possibly irreversible impacts of unregulated land development activity and associated operations.

Section 2: That the City of Atlanta wishes to protect its citizens from the losses of critical natural ecosystems and to protect the health, safety, and welfare of its citizens by protecting existing wetlands and water supply watersheds.

Section 3: That the City of Atlanta wishes to maintain its official certification from the Georgia Department of Community Affairs by complying with mandates from that agency to establish and implement effective environmental regulations addressing wetlands and water supply watersheds, and by incorporating reference to these regulations, along with specific policies, within the Environmental Element of the City's annual Comprehensive Development Plan.

Section 4: That the 'City of Atlanta Wetland Protection Ordinance' and the 'City of Atlanta Water Supply Watershed Protection Ordinance' (as are represented by the attached Exhibits 'A' and 'B') are hereby adopted and are to be implemented, enforced, and modified, as may be necessary, by the City's Department of Planning, Development, and Neighborhood Conservation.

Section 5: That the Municipal Clerk is hereby directed to transmit a copy of this Ordinance to the Commissioner of the Georgia Department of Community Affairs and to the Chairman of the Atlanta Regional Commission immediately upon its approval by the Mayor of the City of Atlanta.

Section 6: That all ordinances and parts of ordinances that may be in conflict herewith with this Ordinance are hereby repealed.

EXHIBIT A

City of Atlanta Wetland Protection Ordinance

Findings and Purpose

Findings of Fact

The wetlands within the City of Atlanta, Georgia are indispensable and fragile natural resources with significant development constraints due to flooding, erosion and soils limitations. **In** their natural state, wetlands serve man and nature. They provide habitat areas for fish, wildlife and vegetation; water quality maintenance and pollution control; flood control; erosion control; natural resources education; scientific study; and open space and recreational opportunities. **In** addition, the wise management of forested wetlands is essential to the economic well-being of many communities within the State of Georgia.

Naturally, a considerable number of these important natural resources have been lost or impaired by draining, dredging, filling, excavating, building, pollution and other acts. Piecemeal or cumulative losses will, over time, destroy additional wetlands. Damaging or destroying wetlands threatens public safety and the general welfare.

It is therefore necessary for the City of Atlanta, Georgia to ensure maximum protection for wetlands by discouraging development activities that may adversely affect wetlands.

1.2 Title and Purpose

This Ordinance shall be known as the Wetland Protection Ordinance of Georgia. The purpose of this Ordinance is to promote wetland protection, while taking into account varying ecological, economic development, recreational and aesthetic values. Activities that may damage wetlands should be located **on** upland sites to the greatest degree practicable or determined through a permitting process. The objective of this Ordinance is to protect wetlands from alterations that will significantly affect **or** reduce their primary functions for water quality, floodplain and erosion control, groundwater recharge, aesthetic nature and wildlife habitat.

2 Wetland Protection District

2.1 Wetland Protection District

This ordinance shall apply to all lands within wetlands located within the jurisdiction of the City of Atlanta, Georgia. The

Generalized Wetland Map, adopted as part of this ordinance, shows the general location of wetlands and should be consulted by persons contemplating activities in **or** near wetlands. The Generalized Wetland Map, together with all explanatory matters thereon and attached thereto, is hereby adopted by reference and declared to be a part of this ordinance. The Generalized Wetland Map shall be on file in the office of the City **of** Atlanta City Clerk.

2.2 Wetland Protection District Boundaries.

The Generalized Wetland Map is a general reference document, and wetland boundaries indicated **on** the map are approximations. The purpose **of** the Generalized Wetland Map is **to** alert developers/landowners if they are within proximity to **a** wetland, which means that there is a high likelihood of the presence of a jurisdictional wetland and a need for the developer/landowner to seek U.S. Army Corps of Engineers guidance as to whether a Section **404** permit will be required prior to any activity. The Generalized Wetland Map does not represent the boundaries of jurisdictional wetlands within the jurisdiction of the City of Atlanta Code, and cannot serve as a substitute for a delineation of wetland boundaries by the U.S. Army Corps. **of** Engineers, as required by Section **404** of the Clean Water Act, **as** amended. Any local government action under this ordinance does not relieve the land owner from federal **or** state permitting requirements.

2.3 Relationship to Zoning

The Wetland Protection District is hereby established. The Wetland Protection district shall comprise an overlay zone that supplements and is indicated on the City of Atlanta Zoning Map, which is hereby incorporated and made part of this ordinance by reference. When the **two** Ordinances conflict, the more restrictive Ordinance shall apply.

3 Development Permits

3.1 Development Permit Requirements.

No regulated activity will be allowed within the Wetland Protection District without written permission **from** the City of Atlanta, Georgia in the form of a local development permit. Issuance of a local development permit is contingent **on** full compliance with the terms of this ordinance and other applicable regulations. All activities that **are** not identified in Subsection **3.2** below **or** by other local development ordinances, shall be prohibited without prior issuance **of** a local development permit. If the area proposed for development is located

within **50** feet of the Wetland Protection District boundary, as determined from the Generalized Wetland Map, a **U. S.** Army Corps of Engineers determination shall be required. If the Corps determines that wetlands are present on the proposed development site and that a Section **404** Permit **of** letter of Permission is required, a local development permit will be issued only following issuance of the Section **4040** Permit or Letter of Permission.

3.2 Permit Requirements within the Wetland District Setback.

Prior to issuance **of** any development permit for activity within **500** feet **of** a wetland, the applicant must include, with the site plans for the proposed action documentation that the following post-development conditions will prevail at the site:

- 3.2.1** The rate of stormwater runoff, volume of stormwater runoff, and peak runoff from the site will not exceed pre-development levels.
- 3.2.2** The amount of the following pollutants carried within runoff from the site will not exceed pre-development conditions: (1) phosphorus; (2) nitrogen; (3) zinc; (4) lead. In addition, biological oxygen demand (BOD) and turbidity (TSS) shall not exceed pre-development levels.
- 3.2.3** In addition to other fees assessed, the applicant liable for costs incurred by the during evaluation of the performance standards evaluation.

3.3 Permissible Uses (Uses as of Right).

The following uses shall be allowed as of right within **a** wetland to the extent that they are not prohibited by any other ordinances or law, including laws or trespass, and provided they do not require structures, grading, fill, draining or dredging except as provided herein.

- 3.3.1** Conservation or preservation of soil, water, vegetation, fish and other wildlife, provided they do not affect waters of Georgia or of the United States in such a way that would require an individual **404** Permit.
- 3.3.2** Outdoor passive recreational activities, including fishing, bird watching, hiking, boating, horseback riding and canoeing.
- 3.3.3** Forestry practices applied in accordance with best management practices approved by the Georgia Forestry Commission and as specified **in** Section **404** of the Clean Water Act.

- 3.3.4** The continued cultivation of agricultural crops. Agricultural activities shall be subject to best management practices approved by the Georgia Department of Agriculture.
- 3.3.5** The pasturing of livestock, provided that riparian wetlands are protected, that soil profiles are not disturbed and that approved agricultural Best Management Practices are followed.
- 3.3.6** Education, scientific research and nature trails.
- 3.3.7** Temporary Emergency Permit. A temporary emergency permit can be issued by *[governing authority or its designee]* for the following reasons:

Maintenance **or** repair of lawfully located roads **or** structures and of facilities used in the service **of** the public to provide transportation, electric, gas, water, telephone, telegraph, telecommunication or other services, provided that such roads, structures or facilities are not materially changed or enlarged and written notice prior to the commencement **of** work has been given to the *[governing authority or their designee]* and provided that the work is conducted using best management practices to ensure that flow and circulation patterns and chemical and biological characteristics **of** the wetland are not impaired and that any adverse effect on the aquatic environment will be minimized.

Temporary water-level stabilization measures associated with ongoing silvicultural operations.

Limited ditching, tilling, dredging, excavating or filling done solely for the purpose of maintaining **or** repairing existing drainage systems necessary for the cultivation of agricultural crops, provided that the maintenance or repair activity does not result in the impairment, alteration **or** loss **of** wetlands not previously subject to agricultural and silvicultural use.

Limited excavating **and** filling necessary for the repair and maintenance of piers, walkways, nature trails, observation decks, wildlife management shelters, boathouses **or** other similar water-related structures, provided that they are built on pilings to allow unobstructed flow **of** water and preserve the natural contour **of** the wetland.

3.4 Site Plans

Applications for a local development permit within the Generalized Wetland Protection District shall include a site plan, drawn at a scale of 1" = **50** ft with the following information:

- 3.4.1** A map of all planned excavation and **fill**, including calculations of the volume of cut and **fill** involved, cross-sectional drawings showing existing and proposed grades. Elevations, horizontal scale and vertical scale must be shown **on** the cross-sectional drawings.
- 3.4.2** A map of any wetland boundaries occurring within the site must be provided. This boundary may be included on other maps provided by the applicant.
- 3.4.3** Location, dimensions and area of all impervious surfaces, both existing and proposed, on the site and adjacent to the site for a distance of **50** feet.
- 3.4.4** The orientation and distance from the boundaries **of** the proposed site to the nearest bank of an affected perennial stream or water body.
- 3.4.5** Elevations of the site and adjacent lands within **200** feet **of** the site at contour intervals of no greater than **two** feet; and **no** greater than one foot for slopes less than or equal to **two** percent.
- 3.4.6** Location and detailed design of any spill and leak collection systems designed for the purpose of containing accidentally released hazardous **or** toxic materials.
- 3.4.7** **All** proposed temporary disruptions or diversions of local hydrology.

3.5 Activities to comply with site plan.

All development activities or site work conducted after approval of the site plan shall conform with the specifications of said site plan. The site plan may be amended only with the approval of the City of Atlanta, Georgia. The **City** of Atlanta may require additional information deemed necessary to verify compliance with the provisions of this ordinance or to evaluate the proposed use in terms of the purposes of this ordinance.

3.6 Subdivision Design Options in the Wetland Protection District.

Any subdivision that includes Jurisdictional Wetlands shall be criteria established in the City of Atlanta Subdivision Ordinance.

3.7 Filing Fee

At the time of the application, the applicant shall pay a filing fee specified by the City of Atlanta. Filing fees up to a maximum of **\$1,000** may be required to evaluate the application. This fee may be used to retain expert consultants who will provide services pertaining to functional assessment, mitigation and wetland boundary determinations as deemed necessary by the City of Atlanta.

3.8 Enforcement Authority.

The Department of Planning, Development and Neighborhood Conservation is hereby established as the administrator of this Ordinance.

3.9 Review Procedures.

The application shall be made to the Department of Planning, Development and Neighborhood Conservation and will be reviewed within **30** days. The review period shall begin upon determination by the Department of Planning, Development and Neighborhood Conservation that the application submitted is complete. The review period shall include the preparation of findings (approval or disapproval) by the Department of Planning, Development and Neighborhood Conservation. The applicant will receive written notification of the findings of the City of Atlanta. **If** the review process is not completed within **30** days, the application is considered to be approved.

3.10 Appeals.

Decisions on permit applications made by the Department of Planning, Development and Neighborhood Conservation may be appealed to the Zoning Review Board and then to the Zoning Committee of the Atlanta City Council. The appeal must be made within **30** days of the decision rendered by the Department of Planning, Development and Neighborhood Conservation. A public hearing shall be held for appeals. Public announcement of the hearing shall be printed in a local newspaper of general circulation at least **15** days prior to the hearing. Any person may offer testimony at the hearing. The decision of the Zoning Review Board/Zoning Committee of the Atlanta City Council may be appealed to a court of competent jurisdiction, as discussed **in** Section **6**.

3.11 Duration of Permit Validity

- 3.12.1** If construction described in the development permit has not commenced within **12** months from the date of issuance, the permit shall expire.
- 3.12.2** If construction described in the development permit is suspended or abandoned after work has commenced, the permit shall expire **12** months after the date that work ceased.
- 3.12.3** Written notice of the pending expiration of the development permit shall be issued by the City of Atlanta.

4 Monitoring and Enforcement

- 4.1** The Department of Planning, Development and Neighborhood its agent, officers or employees shall have authority to enter upon privately owned land for the purpose **of** performing their duties under this ordinance and may take or cause to be made such examinations, surveys or sampling as the Department of Planning, Development and Neighborhood Conservation deems necessary.
 - 4.1.1** All enforcement and monitoring activities conducted by the Department of Planning, Development and Neighborhood Conservation shall be preceded by written notification to the landowner. Said notification shall be issued at least **10** days prior to the activities specified in the notification.
 - 4.1.2** The Department of Planning, Development and Neighborhood Conservation shall have authority to enforce this ordinance; issue permits hereunder; and address violations or threatened violations hereof by issuance of violation notices, administrative orders and civil and criminal actions. All costs, fees and expenses in connection with such actions may be recovered as damages against the violator.
 - 4.1.3** Law enforcement officials or other officials having police powers shall have authority to assist the Department of Planning, Development and Neighborhood Conservation in enforcement.
 - 4.1.4** The Department of Planning, Development and Neighborhood Conservation shall have authority to issue cease and desist orders in the event of any violation of this ordinance. Cease and desist orders may be appealed to a court of competent jurisdiction, as identified in Section **6**.
- 4.2** The City of Atlanta may require a bond in an amount **of \$5,000** or **10%** of the total improvement cost, or whichever is greater and with surety and conditions sufficient to secure compliance with the conditions set forth in the permit. The particular amount and the conditions **of** the bond shall be consistent with the purposes **of** this ordinance. In the event of a breach of any condition of any such

competent jurisdiction upon such bond and prosecute the same to judgment and execution.

5 Penalties

- 5.1** Any person who commits, takes part in **or** assists in any violation of any provision of this Ordinance **may** be fined not more than **\$1,000** for continuing violation, each day's continuance shall be deemed to be a separate and distinct offense.
- 5.2** When **a** building **or** other structure has been constructed in violation of this Ordinance, the violator may be required to remove the structure at the discretion of the City **of** Atlanta.
- 5.3** When removal of vegetative cover, **excavation or fill** has taken place in violation of this Ordinance, the violator may be required to restore the affected land to its original contours and to restore vegetation as far as practicable, at the discretion of the City of Atlanta.
- 5.4** If the City **of** Atlanta discovers a violation of this ordinance that also constitutes a violation of any provisions of the Clean Water Act as amended, the City of Atlanta shall issue written notification of the violation to the **U.S.** Environmental Protection Agency, the **U.S.** Army Corps of Engineers and the landowners.
- 5.5** Suspension, Revocation. The City of Atlanta may suspend **or** revoke a permit if finds that the applicant has not complied with the conditions or limitations set forth in the permit **or** has exceeded the scope of the work set forth in the permit. The City of Atlanta shall cause notice of denial, issuance, conditional issuance, revocation **or** suspension of a permit to be published in a daily newspaper having a broad circulation in the area where the wetland is located.

6 Judicial Review

6.1 Jurisdiction

All final decisions of the City of Atlanta concerning denial, approval or conditional approval of a special permit shall be reviewable in the Fulton County Superior Court.

6.2 Alternative Actions

Based on these proceedings and the decision of the court, the City of Atlanta **may**, within the time specified by the court, elect to:

- 1.** Institute negotiated purchase **or** condemnation proceedings to acquire an easement **or** fee interest in the applicant's land;
- 2.** Approve the permit application with lesser restrictions **or** conditions (i.e., grant a variance); **or**

3. Institute other appropriate actions ordered by the court that fall within the jurisdiction of the Department of Planning Development and Neighborhood Conservations.

7 Amendments

These regulations and the may from time to time be amended in accordance with procedures and requirements in the general statutes as new information concerning wetland locations, soils, hydrology, flooding of plant species peculiar to wetlands becomes available.

8 Assessment Relief

Assessors and boards of assessors shall consider wetland regulations in determining the fair market value of land. Any owner of an undeveloped wetland who has dedicated an easement or entered into a conservation program with the government or a nonprofit organization restricting activities in a wetland shall have that portion of land assessed consistent with those restrictions. Such landowners shall also be exempted from special assessment on the wetland to defray the cost of municipal improvements such as sanitary sewers, storm sewers and water mains.

9 Separability and Abrogation

All sections and subsections of this ordinance are considered separate and distinct. Should any section, subsection, paragraph or part of this ordinance be declared by a court of jurisdiction to be invalid for any reason, it shall not invalidate any other section, subsection, paragraph of part of this ordinance.

All ordinances and regulations on conflict with this ordinance are hereby repealed.

10 Definitions

Functions

The beneficial roles that wetlands serve, including: storage, conveyance and attenuation of floodwater and stormwater; protection of water quantity and quality and reduction of erosion; habitat for wildlife, including rare, threatened and endangered species; food chain support for a wide variety of wildlife and fisheries; educational, historical and archeological value protection; and scenic, aesthetic and recreational amenities.

Generalized Wetland Map

A map showing the general locations of wetlands with the jurisdiction of the City of Atlanta.

Hydric Soils

Soils that form as a result of saturated soils conditions. A list of these soils is maintained by the Soil Conservation Service.

Hydrophytic Vegetation

Macrophytic plants tolerant of or dependent on saturated soil conditions.

Jurisdictional Determination

An official, written statement or map signed by the U.S. Army Corps of Engineers or, in the case of coastal marshlands, the Georgia Department of Natural Resources.

Jurisdictional Wetland

A wetland area that meets the definitional requirements for wetlands as determined by the U.S. Army Corps of Engineers.

Temporary Emergency Permit

A temporary permit that may be issued in certain circumstances specified in Subsection 3.3.7.

Wetland

An area that is inundated or saturated by surface water or groundwater at a frequency and distribution sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. Wetlands generally include swamps, marshes, bogs and similar areas.

Wetland Delineation

The establishment of wetland boundaries by a representative of the U.S. Army Corps of Engineers or an authority designated by the Corps.

Wetland Protection District

All wetlands within the jurisdiction of the City of Atlanta and shown on the Generalized Wetland Map.

EXHIBIT B

City of Atlanta Water Supply (Chattahoochee River) Watershed Protection Ordinance

1 Findings and Purpose

1.1 Findings of Fact

In order to provide for the health, safety and welfare of the public and a healthy economic climate within the City of Atlanta and surrounding communities, it is essential that the quality of public drinking water be assured. The ability of natural systems to filter stormwater runoff can be threatened by unrestricted development. Land-disturbing activities associated with development can increase erosion and sedimentation which threatens the storage capacity of reservoirs. In addition, stormwater runoff, particularly from impervious surfaces, can introduce toxicants, nutrients and sediment into drinking water supplies, making water treatment more complicated and expensive and rendering water resources unusable for recreation. Industrial land uses that involve the manufacture, use, transport and storage of hazardous or toxic waste materials result in the potential risk of contamination of nearby public drinking water supplies.

1.2 Purpose

The purpose of this ordinance is to establish measures to protect the quality and quantity of the present and future water supply of the City of Atlanta; to minimize the transport of pollutants and sediment to the water supply; and to maintain the yield of the water supply watershed. This ordinance shall apply to the portion of the following watershed, which occur within the jurisdiction of the City of Atlanta and are herein identified **as** water supply watersheds: the Chattahoochee River watershed.

2 Establishment of a Water Supply Watershed District.

The Chattahoochee River Water Supply Watershed Supply district is hereby designated and shall comprise the land that drains to the Gulf of Mexico thorough the Chattahoochee River **from** the Chattahoochee River basin north of Peachtree creek to the ridge line of the watershed. The boundary of the Watershed District is defined by the ridge line of the watershed, the boundary of a radius seven miles upstream of the Chattahoochee River or by the political boundaries of the City of Atlanta, where those boundaries occur within the watershed. The boundary shall be set at places readily identifiable on the City of Atlanta Zoning Map.

2.1 Water Quality Critical Area

The Water Quality Critical Area is established for land that lies adjacent to the Chattahoochee River bank and extending either to the ridge line boundary of the watershed or one mile, whichever is the shorter distance. The Water Quality Critical Area also includes land adjacent to the banks of streams upstream of the Chattahoochee River within a radius of seven miles from the river's boundary and 2,000 feet on either side of such streams, as measured from each bank. The boundary of the Water Quality Critical Area shall be set at places readily identifiable on the Atlanta Zoning Map and shall be designated on said map. In cases where there are no nearby identifiable features on the Map; the boundary may be set at the nearest identifiable map feature between one and two miles from the reservoir boundary or 2,000 feet from the stream bank.

2.2 Limited Development Area

The limited development area is established for the remaining part of the Watershed District outside the Water Quality Critical Area.

3 Permit Required

3.1 Permit Requirements

Within the Water Supply Watershed District, no land-disturbing activity, construction or other development, other than certain exempted activities identified within may be conducted without a permit from the City of Atlanta and must be in full compliance with the terms of this ordinance and other applicable regulations. All activities that are not permissible as of right or as special permit uses shall be prohibited.

3.2 Exemptions

The following land-use activities are exempted from the permit and site plan requirements of this Ordinance:

3.2.1 Agriculture and Forestry. Normal agricultural activities involving planting and harvesting of crops are exempted if they conform to best management practices established by the Georgia Department of Agriculture. Silvicultural activities must conform to best management practices established by the Georgia Forestry Commission.

**LARGE
DOCUMENT
ATTACHED**